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COURT OF APPEAL, FOURTH APPELLATE DISTRICT

DIVISION ONE

STATE OF CALIFORNIA

STANLEY EZELL SINGLETON,

Plaintiff and Appellant,

v.

FRANK PUGLIA et al.,

Defendants and Respondents.

D052383

(Super. Ct. No.
37-2007-00064902-CU-PN-CTL)

APPEAL from a judgment of the Superior Court of San Diego County, Michael M. Anello, Judge. Affirmed.

Plaintiff Stanley Ezell Singleton appeals a judgment dismissing his legal malpractice complaint after the trial court sustained the demurrers of defendants Frank Puglia, Edward John Peckham, and S. Ward Heinrichs (together Defendants). On appeal, Singleton contends that although his complaint was untimely filed under the applicable California statute of limitations, United States Supreme Court case law supports a conclusion that a criminal defense legal malpractice cause of action does not arise or

begin to accrue until after a criminal defendant completes his or her pursuit of postconviction remedies. He also argues the trial court erred by not staying his action while he pursued his postconviction remedies. Finally, he argues the trial court erred by not granting him leave to amend his complaint to allege his actual innocence of the criminal offenses of which he was convicted.

FACTUAL AND PROCEDURAL BACKGROUND

On November 14, 2000, the trial court sentenced Singleton to an eight-year prison term for a Health and Safety Code section 11352, subdivision (a) offense, two consecutive one-year enhancements under Penal Code section 667.5, subdivision (a), and a consecutive eight-month term for a Penal Code section 524 offense.

On or about April 9, 2007, Singleton filed a legal malpractice complaint against Defendants, his criminal defense attorneys in the 2000 criminal proceedings. On August 15, he filed a first amended complaint against Defendants.

On November 1, defendants Puglia and Peckham filed a demurrer, arguing the complaint was barred by the statute of limitations for legal malpractice actions. On November 9, defendant Heinrichs filed a demurrer, also arguing the complaint was barred by the statute of limitations for legal malpractice actions (i.e., Code of Civil Procedure, § 340.6).¹

¹ All further statutory references are to the Code of Civil Procedure.

On December 14, the trial court sustained Defendants' demurrers on the ground that Singleton's complaint was barred by section 340.6's statute of limitations for legal malpractice actions. Singleton timely filed a notice of appeal.²

DISCUSSION

I

Demurrer Standard of Review

"A demurrer tests the legal sufficiency of the complaint. [Citation.] Therefore, we review the complaint de novo to determine whether it contains sufficient facts to state a cause of action. [Citation.] 'We treat the demurrer as admitting all material facts properly pleaded, but not contentions, deductions or conclusions of fact or law.' [Citation.] The trial court exercises its discretion in declining to grant leave to amend. [Citation.] If it is reasonably possible the pleading can be cured by amendment, the trial court abuses its discretion by not granting leave to amend. [Citation.] The plaintiff has the burden of proving the possibility of cure by amendment. [Citation.]" (*Grinzi v. San Diego Hospice Corp.* (2004) 120 Cal.App.4th 72, 78.)

In reviewing an order sustaining a demurrer in whole or in part, "courts must assume the truth of the complaint's properly pleaded or implied factual allegations. [Citation.] Courts must also consider judicially noticed matters. [Citation.] In addition, we give the complaint a reasonable interpretation, and read it in context. [Citation.]"

² On June 17, 2008, we issued an order deeming the trial court's December 14, 2007, order sustaining the demurrers to incorporate a judgment of dismissal.

(*Schifando v. City of Los Angeles* (2003) 31 Cal.4th 1074, 1081.) A complaint otherwise good on its face is nevertheless subject to demurrer when facts judicially noticed show it is defective. (*Evans v. City of Berkeley* (2006) 38 Cal.4th 1, 6; *Joslin v. H.A.S. Ins. Brokerage* (1986) 184 Cal.App.3d 369, 374.) An affirmative defense may be raised on demurrer and, if that defense appears on the face of the complaint, with consideration of judicially noticed facts, to necessarily bar one or more causes of action, the demurrer must be sustained in whole or in part. (*Marshall v. Gibson, Dunn & Crutcher* (1995) 37 Cal.App.4th 1397, 1403; *Mangini v. Aerojet-General Corp.* (1991) 230 Cal.App.3d 1125, 1155; *Evans v. City of Berkeley*, at p. 6; *Joslin v. H.A.S. Ins. Brokerage*, at p. 374.)

II

Legal Malpractice Statute of Limitations

Section 340.6, subdivision (a), sets forth the applicable statute of limitations for legal malpractice actions:

"An action against an attorney for a wrongful act or omission . . . arising in the performance of professional services shall be commenced *within one year after the plaintiff discovers, or through the use of reasonable diligence should have discovered, the facts constituting the wrongful act or omission, or four years from the date of the wrongful act or omission, whichever occurs first.* In no event shall the time for commencement of legal action exceed four years except that *the period shall be tolled during the time that any of the following exist: [¶] . . . [¶] (4) The plaintiff is under a legal or physical disability which restricts the plaintiff's ability to commence legal action.*" (Italics added.)

Section 352.1, subdivision (a), provides for tolling of a statute of limitations for a period of up to two years while a person is disabled because of incarceration.³ (*Carlson v. Blatt* (2001) 87 Cal.App.4th 646, 649.) Accordingly, there is, *at most*, a six-year period after an attorney's wrongful act or omission during which a legal malpractice action must be filed. (*Rose v. Hudson* (2007) 153 Cal.App.4th 641, 652.) Equitable tolling cannot be applied to extend the section 340.6 period for filing a legal malpractice action. (*Rose*, at pp. 655-657; *Bledstein v. Superior Court* (1984) 162 Cal.App.3d 152, 156-160; *Jordache Enterprises, Inc. v. Brobeck, Phleger & Harrison* (1998) 18 Cal.4th 739, 756 ["The Legislature expressly disallowed tolling under any circumstances not stated in the statute [i.e., § 340.6, subd. (a)].".])

III

Singleton's Action Is Barred by Section 340.6, Subdivision (a)

Singleton concedes that, assuming *arguendo* the section 340.6, subdivision (a), maximum four-year limitations period applies after a section 352.1, subdivision (a), two-year tolling period because of his incarceration, his legal malpractice action was untimely filed and is therefore barred by section 340.6, subdivision (a). The wrongful acts and omissions alleged against Defendants occurred no later than November 14, 2000, when

³ Section 352.1, subdivision (a), provides: "If a person entitled to bring an action . . . is, at the time the cause of action accrued, imprisoned on a criminal charge, or in execution under the sentence of a criminal court for a term less than for life, the time of that disability is not a part of the time limited for the commencement of the action, not to exceed two years."

Singleton was sentenced for his criminal convictions. However, he did not file his legal malpractice complaint against Defendants until April 7, 2007. Because the maximum six-year period during which he could file his complaint expired on November 14, 2006, Singleton correctly concedes (and the trial court correctly concluded) his complaint was untimely filed and is therefore barred by section 340.6, subdivision (a).

Nevertheless, Singleton contends that although his complaint was untimely filed under the applicable California statute of limitations, United States Supreme Court case law supports a conclusion that a legal malpractice cause of action does not arise or begin to accrue until after a criminal defendant completes his or her pursuit of postconviction remedies. As support for his argument, he cites *Heck v. Humphrey* (1994) 512 U.S. 477 and *Edwards v. Balisok* (1997) 520 U.S. 641. However, as Defendants note, both of those cases involve only *federal* causes of action under title 42 United States Code section 1983 and not any state causes of action. Our independent reading of those cases does not reveal any language to arguably support Singleton's contention that a legal malpractice cause of action (or other state cause of action) does not or cannot accrue until after a criminal defendant completes his or her pursuit of postconviction remedies. Rather, as the California Supreme Court stated, "we decline to adopt the legal fiction that an innocent person convicted of a crime suffered no actual injury until he or she was exonerated through postconviction relief." (*Coscia v. McKenna & Cuneo* (2001) 25 Cal.4th 1194, 1210.) Accordingly, as section 340.6, subdivision (a), provides, Singleton's legal malpractice cause of action began to accrue on Defendants' alleged acts or

omissions on or before November 14, 2000, more than six years before he filed his complaint. There is no United States Supreme Court case law that precludes the application of section 340.6, subdivision (a), to bar Singleton's legal malpractice action against Defendants.⁴

Singleton also argues we should order the trial court to stay his action pending his pursuit of postconviction remedies. However, because his action was untimely filed and is barred by section 340.6, subdivision (a), there is no pending action to stay. There must first be a timely-filed action before a trial court can stay that action pending a plaintiff's pursuit of postconviction remedies. (*Coscia v. McKenna & Cuneo, supra*, 25 Cal.4th at pp. 1210-1211.) The trial court did not err by not staying Singleton's action instead of dismissing it.

Finally, Singleton argues the trial court should have granted him leave to amend his complaint to allege his actual innocence and additional information regarding his pursuit of postconviction remedies. However, because his complaint was untimely filed and is barred by section 340.6, subdivision (a), his proposed amendment(s) would not

⁴ To the extent Singleton alternatively argues *Heck* and *Edwards* require *tolling* of his legal malpractice cause of action while he pursues postconviction remedies (i.e., tolling beyond the section 352.1, subdivision (a), two-year maximum period for incarceration disability), we likewise conclude those cases do not provide any support for that argument. Because Singleton's pursuit of postconviction remedies is irrelevant to our disposition of this case, we deny his request that we take judicial notice of his various petitions for writ of habeas corpus or other relief (e.g., in San Diego County Superior Court Case Nos. SCD 149494 and SCD 142448 and in Fourth District Court of Appeal Case No. D043717).

save it from dismissal on demurrer. The trial court did not abuse its discretion by denying him leave to amend his complaint.

DISPOSITION

The judgment is affirmed.

McDONALD, J.

WE CONCUR:

BENKE, Acting P. J.

NARES, J.